



**REGISTERED POST WITH A/D.
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**ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT, KOLKATA
(erstwhile KOLKATA PORT TRUST)**

(Appointed by the Central Govt. Under Section 3 of Act 40 of 1971-Central Act)
Public Premises (Eviction of Unauthorized Occupant) Act 1971

OFFICE OF THE ESTATE OFFICER

6, Fairley Place (1st Floor)

KOLKATA - 700 001

Court Room At the 1st Floor
of Kolkata Port Trust's
Fairley Warehouse
6, Fairley Place, Kolkata- 700 001.

REASONED ORDER NO. 71 DT 07.06.2022
PROCEEDINGS NO. 1480 of 2015

BOARD OF TRUSTEES OF THE PORT OF KOLKATA

-Vs-

M/S MACNEILL FORKLIFT SERVICES LTD.

F O R M - "B"

**ORDER UNDER SUB-SECTION (1) OF SECTION 5 OF THE PUBLIC
PREMISES (EVICTION OF UNAUTHORISED OCCUPANTS) ACT, 1971**

WHEREAS I, the undersigned, am satisfied, for the reasons recorded below that **M/s Macneill Forklift Services Ltd., P-10, Taratala Road, Kolkata- 700 088 and also of 144, Remount Road, Kolkata- 700 027** is in unauthorized occupation of the Public Premises specified in the Schedule below:

REASONS

1. That O.P. has no authority to occupy the Public Premises in question upon expiry of the License period on 30.06.2014 and after the requisition made by SMPK, vide their letter dated 12.05.2015.
2. That O.P. was under legal obligation to hand over vacant, peaceful and unencumbered possession to SMPK after expiry of the License period in question on 30.06.2014.
3. That O.P. has palpably failed to discharge its liability to hand over possession of the public premises, as a Licensee, in terms of the Indian Easements Act, 1882.
4. That the alleged duty/responsibility of SMPK for withdrawal of Railway Tracks as stated by O.P. does not constitute a part of contractual relationship between the parties.
5. That O.P. has failed to establish its case for reduction in License Fees/ Rent for a plot, which had ceased to be Railway served.
6. That the O.P. is not at all entitled to claim reimbursement from SMPK for the expenses reportedly incurred by O.P. for said removal of Railway Tracks.
7. That the O.P. has defaulted in making payment of rental dues/ License fees to SMPK.
8. That SMPK's claim on account of License Fees/ Rent is based on the Schedule of Rent Charges (SoR), as published in the Calcutta Gazette, having statutory

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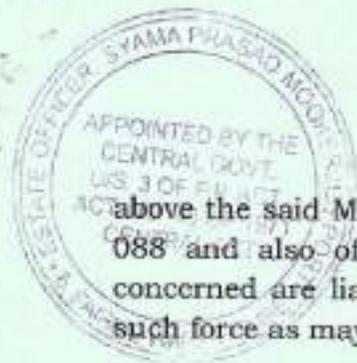
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force in law in determining the quantum of dues/charges as payable by O.P. to SMPK.

9. That this Forum constituted under the provisions of the Public Premises Act, 1971 is not empowered to adjudicate the case of alleged dishonor of Cheques tendered by O.P. to SMPK, when there is a separate mechanism sanctioned by a different statute in force to deal with and decide such issues.
10. That the O.P. is definitely liable to pay Interest in case of delayed payment of License Fees/ Rent to SMPK
11. That the O.P. has failed to take the shield of "competency" of filing application on behalf of SMPK by Sr. Assistant Traffic Manager (Estate), SMPK to question the maintainability of the proceedings.
12. That the proceedings at the instance of SMPK against O.P. is not barred by law of estoppel, waiver.
13. That the O.P. has unauthorisedly parted with the possession of the premises.
14. That the O.P. has made unauthorised constructions at the subject premises.
15. That the O.P. has made or in case, allowed unauthorized demolitions of SMPK structure at the subject premises.
16. That the O.P. has put the premises to use in complete deviation from the 'permitted use' as had been granted to them in terms of the agreement with SMPK.
17. That the O.P.'s contention regarding non-maintainability of the present proceedings in view of Government Guideline vide Notification dated 30.05.2002, as published in the Gazette of India dated 08.05.2002 has little merit in the eyes of Law, taking into consideration the facts and circumstances of the case.
18. That O.P. has failed to bear any witness or adduce any evidence in support of its contention regarding "authorized occupation".
19. That notice demanding possession dated 12.05.2015 as issued to O.P. by the Port Authority is valid, lawful and binding upon the parties.
20. That occupation of O.P. has become unauthorized in view of Sec 2 (g) of the Public Premises Act and O.P. is liable to pay damages for unauthorized use and enjoyment of the Port property to SMPK upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

A copy of the reasoned order No. 71 dated 07.06.2020 is attached hereto which also forms a part of the reasons.

NOW, THEREFORE, in exercise of the powers conferred on me under Sub-Section (1) of Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, I hereby order the said M/s Macneill Forklift Services Ltd., P-10, Taratala Road, Kolkata- 700 088 and also of 144, Remount Road, Kolkata- 700 027 and all persons who may be in occupation of the said premises or any part thereof to vacate the said premises within 15 days of the date of publication of this order. In the event of refusal or failure to comply with this order within the period specified



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above the said M/s Macneill Forklift Services Ltd., P-10, Taratala Road, Kolkata- 700 088 and also of 144, Remount Road, Kolkata- 700 027 and all other persons concerned are liable to be evicted from the said premises, if need be, by the use of such force as may be necessary.

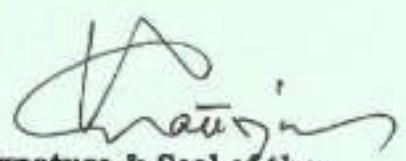
SCHEDULE

Plate no - D 810

The said piece or parcel of land measuring about 6362.60 sqm Developed land measuring 882 sqm & Structure measuring about 3112.40 sqm is situated at Remount Road, P.S. South Port Police Station. It is bounded on the North by Remount Road on the South partly by drain and partly Trustees' land occupied by Dulichand Omraolal, on the West by Trustees' land occupied by Dulichand Omraolal and on the East partly by drain and partly by Trustees' land occupied by Hansa & Co.

Trustee's means the Syama Prasad Mookerjee Port, Kolkata (erstwhile the Board of Trustees for the Port of Kolkata.)

Dated: 07.06.22


**Signature & Seal of the
Estate Officer.**

COPY FORWARDED TO THE ESTATE MANAGER, SYAMA PRASAD MOOKERJEE PORT, KOLKATA FOR INFORMATION.



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HAND DELIVERY
AFFIXATION ON PROPERTY**

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Public Premises (Eviction of Unauthorized Occupant) Act 1971
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REASONED ORDER NO. 71 DT 07.06.2022
PROCEEDINGS NO. 1480/D of 2015

Form "G"

Form of order under Sub-section (2) and (2A) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971

To
**M/s Macneill Forklift Services Ltd.,
P-10, Taratala Road,
Kolkata- 700 088
and also of
144, Remount Road,
Kolkata- 700 027.**

Whereas I, the undersigned, am satisfied that you were in unauthorised occupation of the public premises mentioned in the Schedule below:

And whereas by written notice dated 20.11.2017 (Vide Order No 36 dated 04.10.2017) you were called upon to show- cause on/or before 15.12.2017 why an order requiring you to pay a sum of Rs 2,13,70,066/- (Rupees Two Crore Thirteen Lakhs Seventy Thousand Sixty Six Only) and Rs 3,31,27,986/- (Rupees Three Crore Thirty One Lakhs Twenty Seven Thousand Nine Hundred Eight Six only) being damages payable together with compound interest for unauthorised use and occupation of the said premises, should not be made.

And whereas I have considered your objections and/ or the evidence produced by you;

Now, therefore, in exercise of the powers conferred on me by Sub-section (2) of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971, I hereby order you to pay the sum of Rs 2,13,70,066/- (Rupees Two Crore Thirteen Lakhs Seventy Thousand Sixty Six Only) for the period from 01.06.2015 to 31.01.2016 and Rs 3,31,27,986/- (Rupees Three Crore Thirty One Lakhs Twenty Seven Thousand Nine Hundred Eight Six only) for the period from 01.02.2016 to 30.04.2017 assessed by me as damages on account of your unauthorised occupation of the premises to Kolkata Port Trust, by 22.06.2022.

In exercise of the powers conferred by Sub-section (2A) of Section 7 of the said Act, I also hereby require you to pay compound interest @ 6.30 % per annum, which is

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the current rate of interest as per the Interest Act, 1978 (as gathered by me from the official website of the State Bank of India) on the above sum with effect from the date of incurrance of liability, till its final payment in accordance with Notification Published in Official Gazette/s.

A copy of the reasoned order no. 71 dated 07-06-2022 is attached hereto.

In the event of your refusal or failure to pay the damages within the said period or in the manner aforesaid, the amount will be recovered as an arrear of land revenue.

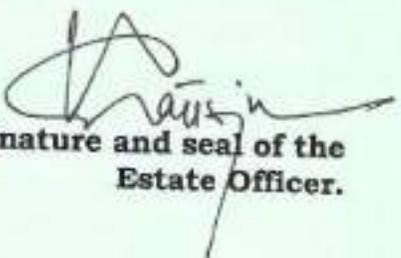
SCHEDULE

Plate no - D 810

The said piece or parcel of land measuring about 6362.60 sqm Developed land measuring 882 sqm & Structure measuring about 3112.40 sqm is situated at Remount Road, P.S. South Port Police Station. It is bounded on the North by Remount Road on the South partly by drain and partly Trustees' land occupied by Dulichand Omraolal, on the West by Trustees' land occupied by Dulichand Omraolal and on the East partly by drain and partly by Trustees' land occupied by Hansa & Co.

Trustee's means the Syama Prasad Mookerjee Port, Kolkata (crstwhile the Board of Trustees for the Port of Kolkata.)

Dated: 07-06-2022


Signature and seal of the
Estate Officer.

COPY FORWARDED TO THE ESTATE MANAGER, SYAMA PRASAD MOOKERJEE PORT, KOLKATA FOR INFORMATION.



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

1480, 1480/D of 2015 Order Sheet No. 71

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/s Macneill Forklift Services Ltd.

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07-06-2022

FINAL ORDER

Relevant facts leading to this proceeding are required to be put forward in order to link up the chain of events. The instant proceedings No. 1480, 1480/R and 1480/D of 2015 arise out of the application bearing No. Lnd 5506/1-2013/Comprehensive Tender/TN-13/1/12/15/832 dated 15.06.2015 filed by Syama Prasad Mookerjee Port, Kolkata [erstwhile Kolkata Port Trust/ KoPT, hereinafter referred to as 'SMPK'], the applicant herein, under the provisions of the **Public Premises (Eviction of Unauthorised Occupants) Act, 1971** (hereinafter referred to as 'the Act') praying for an order of eviction, recovery of rental dues as well as compensation / damage charges along with accrued interest against **M/s Macneill Forklift Services Ltd.** (hereinafter referred to as **O.P.**).

The fact of the case in a nutshell is that the O.P. came into occupation of the port property (under Plate Nos. D- 810) at the land situated at Remount Road, Kolkata, morefully described in the Schedule 'A' of SMPK's said application dated 15.06.2015 as a monthly licensee for a period of 11 months with effect from 01.08.2013 by participating successfully in a SMPK Tender on "as is where is basis", alongwith certain other terms and conditions as enumerated in SMPK's offer letter no Lnd 5506/1-2013/Comprehensive Tender/ TN- 13/1/12/13/357 dated 29.04.2013 and Tender Document No. KoPT/ KDS/LND/01-2013.

It is the case of SMPK that the O.P. failed and neglected to pay the monthly licence fees and taxes, in spite of repeated reminders from SMPK through numerous correspondences, such as letters bearing No. Lnd.5506/1-2013/Comp Tender/TN-13/1/12/13/2357 dated 05.11.2013, Lnd.5506/1-2013/Comp Tender/TN-13/1/12/14/3309 dated 21.02.2014,

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER
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SYAMA PRASAD MOOKERJEE PORT

OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/s Macneill Forklift Services Ltd.



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07.06.2022

By Order of
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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SYAMA PRASAD MOOKERJEE PORT
[Signature]
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Lnd.5506/1-2013/Comp Tender/TN-13/1/12/14/997 dated 01.07.2014, Lnd.5506/15/3273 dated 4/6.02.2015 etc. It is the also the case of SMPK that the O.P. failed and neglected to execute and return the agreement copy of license, inspite of SMPK's specific mention about the same in the said letter No. Lnd.5506/1-2013/Comp Tender/TN-13/1/12/13/357 dated 29.04.2013, conveying its acceptance of the licence offer. It is further the case of SMPK that the O.P. has unauthorisedly demolished SMPK's structure, in gross violation of Clause 7 of the General Terms and Conditions of License (hereinafter referred to as 'GTC' of Tender), unauthorisedly erected some structures, flouting the Clause 16 of said GTC of Tender, unauthorisedly parted with possession of the premises to rank outsiders viz. "Rush Fitness", "Devnil" and "Bella Home" etc., in contravention of Clause 4 of said GTC of Tender and unauthorisedly put the premises in use, in complete deviation of the permitted use of the premises, expressly, for "Storage and Warehousing"; as various parts of the premises are being continued to be used by the said entities viz. "Rush Fitness", as 'Gymnasium and Fitness Centre', by "Devnil" as designer flagship store of dress materials, by "Bella Home" as a retail and show room of furniture and other decorative materials etc, in complete breach of Clause 9 of the said GTC of Tender. It is also stated that several cheques preferred by O.P. towards liquidation of monthly license fees and taxes have been dishonoured by the Banks, due to "insufficiency of funds". It is further the case of SMPK that it made a request to the O.P. to quit, vacate and deliver up peaceful, vacant and unencumbered possession of the subject premises in terms of the demand notice dated 12.05.2015. As the O.P. did not vacate the premises after expiry of the license period on 30.06.2014, even after the notice for demand for possession issued on 12.05.2015, the instant proceeding was initiated before the Forum for eviction of the alleged unauthorized occupant,

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorized Occupants) Act 1971

Proceeding No. 1480, 1480/D of 2015 Order Sheet No. 73

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/s Macneill Forklift Services Ltd.

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07-06-2012

seeking order for realization of dues from O.P. etc. It is the case of SMPK that O.P's occupation has become unauthorised on and from 01.07.2014 and O.P. is liable to pay damages/ compensation for wrongful use and enjoyment of the Port Property in question. It is strongly argued during the course of hearing, that O.P.'s continued unauthorized enjoyment of the premises without paying the requisite charges for the occupation, militates against the well laid provisions of the Public Policy as enshrined in the P. P. Act and as such is highly objectionable.

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THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

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SYAMA PRASAD MOOKERJEE PORT

This Forum of Law formed its opinion to proceed against the O.P. under the relevant provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and issued show Cause Notices u/s 4 of the Act (for adjudication of the prayer of eviction) and u/s 7 of the Act (for adjudication of the prayer for rent and compensation/ damages) as per the Rules made under the Act, all dated 06.07.2015 (vide Order No. 1 dated 03.07.2015).

The O.P. appeared before this Forum through their Ld. Advocate, who filed Vakalatnama, contested the case and filed several applications/ objections.

It reveals from records that the O.P. filed their 'Interim Reply' dated 24.07.2015 in response to the Show Cause Notice dated 06.07.2015 issued by this Forum. The main issues/ points taken by O.P. in the said interim Reply can be summarized as follows:

- i) That the Offer of SMPK was not in conformity with the Tender Notice of SMPK as the Plan delineated in the Tender does not indicate the existence of Railway Tracks in the premises; however, the plan annexed to the offer

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/s Macneill Forklift Services Ltd.

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07.06.2021

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OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

letter of SMPK indicates otherwise. Though the premises are not served by rail, SMPK has been charging rent for the same.

- ii) That there were certain pre-existing derelict pieces of railway line in the licensed premises and on the request of SMPK, the O.P. arranged for the removal of the Railway Tracks and based on such verbal assurance and understanding, the O.P. entrusted the work to a "Contractor", with the help of equipment and labours, with the express understanding that the cost of removal and transportation of the said Railway Tracks would be borne by SMPK and not by O.P. Even after the removal of such Railway Tracks, O.P. had to deploy labours and fill the void created by such removal by depositing "filling material/rubbish/Fly Ash". The cost of removal of such Railway siding borne by O.P. is to the tune of Rs.7.4 lakhs and SMPK is liable to reimburse the amount to O.P. Due to such removal of Railway Track, O.P. had not been able to use the premises for more than 2 (two) months due to the intervening Puja Holidays and surfacing of snakes from the place. There were no roads usable in the premises as incorrectly claimed in the Plan of SMPK and as such, the O.P. had to construct a road with pavers, incurring an investment of more than Rupees 22 Lakhs.
- iii) That the structures were in totally damaged condition and the O.P. had to restore the same in a functional condition.
- iv) That the original License agreement was never handed over to O.P. by SMPK.
- v) That faulty bills are being sent by SMPK to O.P. However, the O.P. has been making payments to SMPK, as per their own calculations.





Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1480, 1480/D of 2015 Order Sheet No. 72

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/s Macneill Forklift Services Ltd.

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07.06.2022

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SYAMA PRASAD MOOKERJEE PORT

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SYAMA PRASAD MOOKERJEE PORT

- vi) That the O.P. has been using the premises for the purpose of "Warehouse" and there is no provision in law that stipulates that a Warehouse cannot be decked up or has to remain bereft of better facilities for ease and comfort. It is the usual practice that bulky products are being displayed in the warehouse. No retail sale is being conducted by the O.P., as has been falsely alleged by SMPK.
- vii) That the O.P. applied for the renewal of said License in time and applied for grant of a 30 years' lease from SMPK, who had also given verbal assurance to that effect. However, suddenly, it was found that instead of acting in the manner as earlier promised, the SMPK authorities started sending illegal bills at 3 (three) times the rate on and from April, 2015.
- viii) That a tenant viz. Escalon Tie Up Pvt. Ltd was initially offered a 15 years' Lease by SMPK, and thereafter a Lease for 30 years' was offered ignoring the allegations that the said Escalon Tie Up Pvt. Ltd. had entered into an agreement with a third party through misrepresentation and that they had handed over the possession of the premises to the said party, thereby realizing crores of rupees as Rents, without bothering to pay SMPK a single penny; and that, SMPK being a Central Government Authority, is not entitled to deal differentially with its occupants as per its discretion and is, in effect, bound to act within the set guidelines of the Ministry of Shipping and the Land Policy, enacted by them.

It appears from records that thereafter the O.P. filed the Reply dated 17.03.2016 and prayed for, inter alia, dismissal of the proceedings. The additional points taken in the said Reply dated 17.03.2016 can be summarized as follows:

[Signature]

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

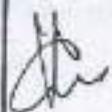
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M/s Macneill Forklift Services Ltd.

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07.06.2022

- (i) That the eviction petition filed by Sr. Assistant Estate Manager, SMPK and the Show Cause Notice dated 03.07.2015 of this Forum were issued without having the jurisdiction and/or acting in excess of jurisdiction, as the same is contrary to the provisions of the Public Premises Act, 1971, to the Land Policy for the Major Ports of Central Government and the orders passed by the Tariff Authority for Major Ports. The Show Cause Notice as well as the petition are also contrary to the Notification dated 30.05.2002 published by the Central Government against the arbitrary use of powers to evict tenants by public bodies;
- (ii) That the O.P. is not an unauthorised occupant of the premises and the Estate Officer has no jurisdiction to issue the said notices under Section 4 and 7 of the Act;
- (iii) That the O.P. has never been adjudged "unauthorised" by any competent Forum and therefore, the claim for compensation/damages by SMPK and the issuance of said Notices u/s 4 and 7 of the Act is without jurisdiction;
- (iv) That no break-up of the Schedule "B" or "C" of the eviction petition has been disclosed to O.P. and as such, the O.P. has been prevented from questioning the veracity or otherwise of the claim of SMPK, thereby flouting the principles of natural justice;
- (v) That the Land Policy of Central Government is binding on SMPK as per the provisions of the Major Port Trust Act, and the SMPK authority has the duty, coupled with the power, to renew the existing license. The eviction petition is contrary to the Land Policy and is therefore null and void;
- (vi) That the said proceeding is hit by the principles of waiver, estoppels and acquiescence and the principles analogous there-to;

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Hd. Assistant
OFFICE OF THE LD. ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT





Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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SYAMA PRASAD MOOKERJEE PORT

Assistant
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

- (vii) That the structures which are visible in the plan are in actuality, some dilapidated and small structures. That the structures have been demolished by O.P., as alleged by SMPK, are not borne out by facts and hence baseless, as would be revealed from any inspection of the premises.
- (viii) It has been alleged by SMPK that a structure measuring 8.5 square meter had been erected near the gate of the premises in question. Such an allegation was also untrue since, being in the premises, the O.P. had applied to CESC for installation of a new meter and removal of the old one. For installation of the new meter, CESC was in requirement of fixing a panel board near the existing meter in the meter room. The existing old meter was also in a dilapidated condition. Certain repair and renovation of the said room for fixing the panel board for installation of the meter was carried out. A temporary shed was put up to protect the electric meter. Under no stretch of imagination, it could be said that any new structure had been erected by O.P. inside the premises in question. The temporary shade was made upon receiving instruction from CESC and also, the repair and renovation of the existing meter room was carried out for the security and safety of the electric meter.
- (ix) That the allegation of SMPK regarding unauthorised parting with possession was absolutely false. The possession of the entire premises in question is with O.P. or its group of associate companies. The names of the companies who are alleged to be the rank outsiders are all groups of companies of O.P. and all of them are functioning under the same management of OP.
- (x) That the allegation of SMPK regarding unauthorised usage of the premises, in deviation of the usage pattern

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VS
M/s Macneill Forklift Services Ltd.

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07.06.2016

as permitted, is also not borne out by facts. As per the tender condition, the premises was given for the purpose of a warehouse/ godown aimed at storage. There has been no deviation from the said nature of use. The advertisement which SMPK indicates gives the address of the said premises as a warehouse. The said premises has never been used as a showroom. There is no documentary evidence to suggest that the premises in question is being used for a different purpose other than the one it has been Licensed out for.

In the mean time, the O.P. vide its application dated 25.02.2016, intimated this forum that the O.P. had preferred a suit for declaration and permanent injunction, being T.S. No. 1185 of 2015 against SMPK, before the Ld. City Civil Court at Calcutta in respect of the Public Premises in question. It was further intimated that, by an order dated 28.08.2015, the Ld. Civil Judge was pleased to grant the order of injunction, restraining the SMPK authorities from evicting the O.P. from the subject premises, subject to payment of licence fees of Rs. 8,44,936/- per month. It was reported further that the said interim order was extended from time to time and the said suit had been pending for disposal before the Ld. Civil Judge. It was further informed that, eventually, by an order dated 05.01.2016, the Ld. City Civil Court at Calcutta was pleased to reject the injunction petition by observing that the Estate Officer, SMPK is at liberty to proceed with the proceeding pending before him after taking into consideration the written statement of the O.P., as well as the evidence, led by the respective parties in accordance with law.

Thereafter, the O.P., in terms of the application dated 23.05.2016, informed this Forum that more than a year ago a large portion of the open land allotted to O.P. had been taken

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Head of Office
OFFICE OF THE LD. ESTATE OFFICER,
SYAMA PRASAD MOOKERJEE PORT

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Appointed by the Central Govt. Under Section 3 of the Public Premises
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BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS
M/s Macneill Forklift Services Ltd.

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07.06.2022

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over by M/s. Larsen Tubro Ltd. for construction of a flyover for the interest of general public. It was informed that a team led by the construction firm, the officials of State Government and the official of SMPK, had demarcated the area over the said plot of land where the construction of such proposed flyover was about to commence and accordingly, some pillars had been constructed, and as a result, the men and agents of O.P. were not allowed to carry out any activities there-on. It was agitated that though a large portion of the area of the said plot of land had been taken over for construction of the said flyover, SMPK had been sending bills on account of licence fees/compensation for the whole area which had initially been granted to O.P. It is stated that the bills which were sent by SMPK since April 2015 are required to be corrected by taking into consideration the reduction of land area for the construction of the proposed flyover. It was also stated that while carrying out the construction work for the said flyover, some goomties existing at the premises had been demolished by the said M/s. Larsen Tubro Ltd. It was contended by O.P., that a joint inspection of the said premises is necessary in order to ascertain the actual area under occupation of O.P. and to determine the actual rent thus payable by O.P. to SMPK. It was submitted by O.P. that once the joint inspection is over, the statement of accounts is reconciled and the licence agreement executed, the O.P. would take immediate steps to liquidate the dues of SMPK, to be arrived at, after adjustment of the excess amount charged as rent bills and taking into consideration, the expenditure incurred by OP for removal of the Railway Tracks.

On being asked by this Forum as to whether the issue of proposed construction of flyover was alive at the time of filing the Reply to Show Cause, the Ld. Advocate for O.P. submitted that such issue could not be dealt with in the said reply or in the interim reply owing to some inadvertent mistake.

[Signature]

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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This Forum has completely failed to appreciate as to how such an important issue of the proposed construction of flyover has missed the attention of both the parties, particularly at the time of filing of the Reply to Show Cause notice by O.P. on 17.03.2016 as well as by SMPK, in their previous applications.

The representative of SMPK did not object to the prayer of O.P. for such joint inspection of the premises. Liberty was given to both the parties to conduct a joint inspection on 31.05.2016, with competent officials in order to ascertain the actual status of the premises and file a Report to this Forum, duly signed by the competent representatives of both the parties. It appears that such joint inspection of the premises was held on 31.05.2016 and a Report of such inspection is filed before this forum on 01.06.2016. It is reported, inter alia, that during the inspection, an area of land of about 1012 Sq.m was found to be affected due to the construction of the said flyover by KMDA. It is further reported that the exact delineation of the area and the date of commencement of work on the subject premises could be ascertained only after receipt of communication from KMDA in this regard.

Representative of SMPK had strongly argued that even after possible addressing of the issue of reduction of the area of land for the proposed flyover project, contended by O.P., there exists several other breaches, allegedly committed by O.P., viz, unauthorised construction, non-payment of SMPK's rent/licence fee, demolition of SMPK's goomty, dishonour of cheque etc. It was brought to the notice of the Forum in terms of SMPK's application dated 21.07.2016 that the area of land allotted to O.P. has been reduced by 728.9 Sq.m. However, in terms of the said Joint minutes dated 31.05.2016, signed by both the parties, the aforesaid area for proposed construction of

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Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

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flyover in question is indicated as 1012 Sq.m. Such being the case, SMPK was directed to confirm the measurement of the area required to be reduced from the schedule of property allotted to O.P, for proper identification and assessment of the area under resolution. SMPK was also directed to file the revised schedule of the area, stating clearly the present boundaries within which the area in question fell, after considering the reduction of area, due to the proposed flyover. SMPK, vide their application dated 01.09.2016 clarified the position and submitted that the area to be reduced is 1012 Sq.m, instead of 728.9 Sq.m, which was reported earlier. As the area of the subject premises has been altered due to the reduction of 1012 Sq.m of area from the total area, the schedule in the Notice under Sec/s 4 & 7 of the Act was required to be modified for proper identification of the area under dispute and, accordingly, fresh notice/s u/s 4 & 7 dated 20.11.2017 were issued by this forum, in partial modification of the earlier notice/s dated 06.07.2015.

Thereafter, O.P. filed another Reply to the Show Cause Notice dated 20.11.2017, mainly reiterating all the points/issues they have taken up in their previous applications/ Reply dated 17.06.2013. During the course of the hearing, on 15.12.2017, it was brought to the notice of this Forum by O.P., that a number of payments supposedly made by O.P. have not been factored in/ taken into account by SMPK and accordingly, adjustment of the same was prayed for by O.P. Considering the submission of O.P., the parties were directed, vide order dated 15.12.2017, to reconcile their respective statements of account and file the minutes of such reconciliation before the Forum of law. Thereafter, repeated opportunities were provided to the parties for reconciliation of accounts in terms of Orders dated 05.10.2018, 28.11.2018, 14.12.2018, 16.01.2019 etc. However, as the matter was endlessly being protracted with no new

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ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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(Eviction of Unauthorised Occupants) Act 1971

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material development or fructification, this Forum concluded the hearing and proceeds to adjudicate the matter on the basis of records / submissions made by the parties.

Now, while passing the Final Order, after carefully considering the documents on record and the submissions made of the parties, I find that the following issues, principally germane to the points under adjudication, related to the subject occupation of the premises by O.P., have come to the fore :

1. Whether the proceedings is maintainable against O.P. or not;
2. Whether the O.P., has the authority to occupy the Public Premises in question upon expiry of the License period on 30.06.2014 and after the requisition made by SMPK vide letter dated 12.05.2015 or not;
3. Whether it has been the obligation of O.P. under law to hand over vacant, peaceful and unencumbered possession to SMPK after expiry of the License period in question on 30.06.2014 or not.
4. Whether the duty/liability of SMPK for withdrawal of Railway Tracks as alleged by O.P., constitutes a part of contractual relationship between the parties or not.
5. Whether O.P. is entitled to a reduction in License Fees/ Rent for a plot, which had ceased to be Railway served;
6. Whether O.P. is entitled to the reimbursement from SMPK for the expenses reportedly incurred by O.P. for the said removal of Railway Tracks or not;
7. Whether O.P. has defaulted in making payment of rental dues/ License fees to SMPK or not;
8. Whether SMPK's claim on account of License Fees/ Rent made on the basis of Schedule of Rent Charges (SoR), as published in the Calcutta Gazette have any force of law

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Appointed by the Central Govt. Under Section 3 of the Public Premises
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in determining the quantum of dues/charges as payable by O.P. to SMPK or not;

9. Whether SMPK's claim that the dishonor by the Bank of the PDC (Post dated Cheques) tendered by O.P. has got any relevance in determining O.P.'s default in payment of monthly license fees/ rent of SMPK or not;
10. Whether O.P. is liable to pay Interest in case of delayed payment of License Fees/ Rent to SMPK or not;
11. Whether O.P. can take the shield of casting doubts on the "competency" of one Sr. Assistant Traffic Manager (Estate), SMPK, for filing an application on behalf of SMPK, to question the very maintainability of the proceedings or not;
12. Whether the proceedings at the instance of SMPK against O.P. is barred by Laws of Estoppel, Waiver or not;
13. Whether O.P. has unauthorisedly parted with the possession of the premises or not;
14. Whether there is any unauthorised construction erected at the subject premises or not;
15. Whether there is any unauthorized demolition of SMPK structure in the public premises or not;
16. Whether O.P. has put the premises to use in complete deviation from the permitted use of the same as had been granted to them in terms of the License agreement with SMPK or not;
17. Whether O.P.'s contention regarding non-maintainability of the Proceedings in view of Government Guideline vide Notification dated 30.05.2002 has got any merit or not;
18. Whether the notice demanding possession from O.P. dated 12.05.2015 is valid and lawful or not;
19. Whether O.P. is liable to pay damages for wrongful occupation to SMPK or not;

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07-06-2022

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SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Appointed by the Central Govt. Under Section 3 of the Public Premises
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With regard to **Issue No. 1**, I must say that the properties owned and controlled by the Port Authority/ SMPK have been declared as "public premises" by the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and Section 15 of the Act puts a complete bar on Court's jurisdiction to entertain any matter relating to eviction of unauthorized occupants from the public premises and recovery of rental dues and/or damages, etc. SMPK has come up with an application for declaration of O.P's status as an unauthorized occupant into the public premises with the prayer for order of eviction, recovery of rental as well as compensation dues against the O.P., on the plea of surcease of the authority to occupy the premises as earlier granted to O.P. in respect of the premises in question. So long as the property of the Port Authority/ SMPK falls under the purview of "public premises" as defined under the Act, the adjudication process, by due service of Show Cause Notice/s u/s 4 & 7 of the Act, is very much maintainable and therefore any question raised about the maintainability of proceedings before this Forum of Law is extraneous and fit to be rejected.

To take this view, I am fortified by an unreported judgment of the Hon'ble High Court, Calcutta delivered by Hon'ble Justice Jyotirmay Bhattacharya J. on 11.03.2010 in Civil Revisional Jurisdiction (Appellate Side) being C.O. No. 3690 of 2009 (M/s Reform Flour Mills Pvt. Ltd. -Vs- Board of Trustees' of the Port of Calcutta), wherein it has been observed specifically that the Estate Officer shall have jurisdiction to proceed with the matter on merit, even there is an interim order of *status quo* of any nature in respect of possession of any public premises in favour of anybody by the Writ Court.

Relevant portion of the said order is reproduced below:

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SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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"In essence the jurisdiction of the Estate Officer in initiating the said proceedings and/or continuance thereof is under challenge. In fact, the jurisdiction of the Estate Officer either to initiate such proceedings or to continue the same is not statutorily barred. As such, the proceedings cannot be held to be vitiated due to inherent lack of jurisdiction of the Estate Officer.

The bar of jurisdiction, in fact, was questioned because of the interim order of injunction passed in the aforesaid proceedings".

Hon'ble Division Bench of Calcutta High Court had the occasion to decide the jurisdiction of the Estate Officer under Public Premises Act in Civil Appellate Jurisdiction being MAT No.2847 of 2007 [The Board of Trustees of the Port of Kolkata and Anr -vs- Vijav Kumar Arva & Ors.] reported in Calcutta Weekly Note 2009 CWN (Vol.113)-P188. The relevant portion of the judgment (Para-24) reads as follows:-

"The legal issue that has arisen is as to the extent of Estate Officer's authority under the said Act of 1971. While it is an attractive argument that it is only upon an occupier at any public premises being found as an unauthorized occupant would be subject to the Estate Officer's jurisdiction for the purpose of eviction, the intent and purport of the said Act and the weight of legal authority that already bears on the subject would require such argument to be repelled. Though the state in any capacity cannot be arbitrary and its decisions have always to be tested against Article 14 of the Constitution, it is generally subjected to substantive law in the same manner as a private party would be in a similar circumstances. That is to say, just because the state is a Landlord or the state is a

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Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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from the Public Premises; if he finds that the noticee is entitled to continue in possession, the matter is over. It is only the entire scope of adjudication on such issues that it removed from a Civil Court and is placed before the estate officer; the substantive law under the Transfer of the Property Act may still be cited before the estate officer and taken into account by him for the purpose of his adjudication. The usual process under the Civil Procedure Code is merely substituted by a summary procedure before the estate officer. The only difference is that the lessee or occupier of any Public Premises may not bring a matter before the estate officer of his own accord, such lessee or occupier only defend his position as respondent if the estate officer is moved by the statutory authority landlord"

Para-29 "

..... As in a Civil suit that a landlord would be required to institute if the lessee or occupier did not pay heed to a notice to quit, so would a statutory authority landlord be liable to justify, before the estate officer, its decision to determine the lease or revoke the occupier's authority to remain possession of the Public Premises. It is not an Anamallai Chub situation where a notice to quit is issued the previous moment and bulldozers immediately follow".

Further, I am equipped by the Order dated 05.01.2016, passed by the Ld. City Civil Court at Calcutta, which clearly bestowed the duty upon this Forum to proceed with the proceeding after taking into consideration the Written Statement/s of the O.P., as well as the evidence, led by the respective parties in accordance with law.

In view of the authoritative decisions as cited above, I have no hesitation in my mind to decide the issue accordingly.

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The **issues No. 2 and 3** are most vital for deciding the question of O.P.'s authority to occupy the premises and as such a conjoint dealing with these issues is found convenient.

It is the case of SMPK that the possession of the subject premises was granted to O.P. on License basis. It appears from the records that a monthly license for a period of 11 months, with effect from 01.08.2013, was granted to O.P. on certain terms and conditions, as enumerated in SMPK's offer letter no. Lnd 5506/1-2013/Comprehensive Tender/ TN-13/1/12/13/357 dated 29.04.2013 and Tender Document No KoPT/ KDS/LND/01-2013. It appears that both the representatives of parties, viz. SMPK and O.P. had executed the Certificate of License dated 01.08.2013, which inter alia, establishes that the subject premises had been ".....licensed to M/s Macneill Forklift Services Ltd. for a period of 11 months w.e.f. 01.08.2013 for the purpose of storage/warehouse....". It also appears from the copy of communication of O.P. dated 28.04.2014 that they have taken possession of the premises in the month of August, 2013.

Thus, it is amply clear that the Public Premises in question was allotted by SMPK to O.P. on License basis. The nature of allotment/ grant of the Public Premises on License basis was never under challenge in the present proceedings. No case has been made out on behalf of O.P. as to how they can escape from the conditions for grant of license and that too, after accepting possession of the premises on such terms and conditions, as laid down by SMPK's letter dated 29.4.2013 and the Tender Document No KoPT/ KDS/LND/01-2013, and paying monthly license fees for a considerable period to SMPK.

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SYAMA PRASAD MOOKERJEE PORT

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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Now, as per law, a License is a mere conferment of a right to do something in or upon the immovable property of the grantor (here, in this case, SMPK), something, which would, in the absence of such right, be construed as unlawful. A licensee is bound to comply with all the terms and conditions for grant of license and failure on the part of licensee to comply with the fundamental conditions for grant of such license, that is to say, non-surrender of the premises after expiry of the license period, can definitely entitle the grantor to exercise their concomitant right to take the appropriate recourse of law. As per the laid down laws, a licensee, in this case, the O.P. is holding on to an inferior quality of right to occupy the premises, not comparable to a lessee. It is a settled question of law that the offer for grant of license together with the governing terms and conditions, it enjoins upon the licensee to discharge, always flows from the side of the licensor and never originates from the licensee. A licensee is very much bound not only to accept the offer but also faithfully obey all the terms and conditions entailing upon it as long as it enjoys the said right. It is the case of SMPK that the license of O.P. was expired on 30.06.2014 and thereafter, a demand for the possession of land was made by SMPK in terms of their letter dated 12.05.2015, requesting O.P. to quit, vacate and deliver up the peaceful possession of the premises to SMPK on 20.05.2015. The receipt of the said notice was also never under challenge by O.P. in the proceeding. As per Section 62 of the Indian Easements Act, 1882, a license is deemed to revoke when it has been granted for a limited period, and the said period expires. As per Section 52 of the Act, where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an

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casement or an interest in the property, the right is called a license. Further, as per Section 63 of the said Act, where a license is revoked, the licensee is entitled to a reasonable time to leave the property affected thereby and to remove any goods which he has been allowed to place on such property. In this regard, it may require mention here that the demand for possession was made by SMPK in May, 2015, which is much later to the expiry of the license in June, 2014. It is apparent from records that no further agreement of license was executed by and between the parties sequel to the said license granted to O.P. from 01.08.2013.

Thus, in my understanding, the "authority" of O.P. came to an end with the expiry of license on 30.06.2014 and the Port Authority was free to take actions against O.P. by resorting to appropriate recourses of law, to get back the possession of the premises. During the course of hearing, a forceful argument / submission has been made from the end of the Port Authority to get back the possession of the premises after such expiry of the license agreement. It is pleaded that Port Authority is lawfully entitled to protect their legal right as the landlord, so that nobody can continue to unauthorisedly occupy the said premises under the plea of 'consented occupation'. I find no element of consent on the part of the SMPK Authority in the form of expression of its assent for continuance in such occupation by O.P., after expiry of the license period.

In view of the above, I am firm in holding that O.P. has no authority to continue to occupy the Public Premises in question, upon expiry of the License period on 30.06.2014 and after the demand made by SMPK's vide letter dated 12.05.2015; and, in the ordinary sequence of events, as mandated in terms of the grant of the license by SMPK, the O.P. was under legal obligation to hand over vacant, peaceful

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APPOINTED BY THE
CENTRAL GOVT
OF PP ACT
Proceedings No.
CENTRAL ACT

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and unencumbered possession of the premises to SMPK, after expiry of the License period in question on 30.06.2014 and a demand for possession from SMPK's end, conveyed through the legal instrument of demand notice, is sufficient to initiate action against O.P. for recovery of possession.

Hence, the issues are decided against the O.P.

Issues no. 4, 5 and 6 are related with O.P's contention regarding services rendered by SMPK and need to be addressed conjointly. It is the submission of O.P. that as per the agreement between the parties, it is the liability of SMPK for removal of the Railway Tracks from the premises for a gainful utilization of the property, which the O.P. had been constrained to achieve, until the railway tracks have been removed from the premises. It is the case of O.P. that as SMPK had failed to discharge its liability for such removal of tracks, the O.P. had no option but to do the work itself and for such purpose, O.P. incurred expenses, which are required to be reimbursed by SMPK. On the other hand, it is the case of SMPK that the possession of the premises was given to O.P. on 'as is where is basis', after providing ample time and opportunities for inspection of the premises to O.P., and O.P. in its own wisdom had participated in the Tender and accepted the offer of SMPK for the allotment of the subject plot of land. Hence, it is not in the fitness of things for O.P. to take the specious refuge that it could not utilize the premises to its fullest extent for the Railway Tracks.

After a careful perusal of the records of the proceedings, it appears that the letter of SMPK dated 29.04.2013 is very specific about the status/fate of Railway Tracks as it has specifically been mentioned in the said communication dated 29.04.2013 that "the railway tracks existing at the premises

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are not to be disturbed. They will be removed by Kolkata Port Trust shortly". It appears that the O.P. in response to such offer letter has addressed a communication dated 02/23.05.2013 stating that they would not be able to use the land blocked by such Railway Tracks and therefore, requested SMPK to measure the land for pro-rata reduction in rent. Further, I have considered O.P.'s communications to SMPK dated 18.06.2013 and 27.06.2013 in this regard. Through both the communications, assistance of SMPK was sought for expeditious removal of the Railway Tracks. Permission for engagement of a Contractor was also sought as an alternative, in case SMPK's Civil Department did not undertake such exercise. Finally, vide communication dated 09.07.2013, the O.P. informed SMPK that they had awarded the Contract for removal of Railway Tracks at Rs.4.5 lacs and the work had commenced. In terms of the letter dated 05.07.2013 of O.P., it had incurred expenses amounting to more than Rs 5 Lakhs towards digging, loading, transportation, unloading of such Railway Tracks from the subject premises to the office of Chief Materials Manager (CMM) Department of SMPK etc. On the other hand, it appears from records that SMPK had issued the letter dated 17.06.2013 granting permission to the O.P. to remove existing Railway Tracks in presence of SMPK's officials, including Security Personnel and transport the same to the office of CMM, SMPK. The O.P. has been requested to intimate the date of such removal to the SMPK authority in advance.

Thus, it is clear from the aforesaid exchange of letters/communications that the foundation of the reported liability of SMPK, as has been alleged by O.P., for removal of such Railway Tracks by SMPK, is based on the assurance and conduct of SMPK as envisaged in the letter dated 29.04.2013.

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Now, the question arises as to how far the statements made by O.P. regarding formation and inviolability of an agreement drawn on the basis of such assurance and conduct of SMPK regarding the fate of Railway Tracks, is true on the basis of materials on record.

To constitute a contract, enforceable under law, there must be valid terms of offer on the part of one party and an absolute, unqualified acceptance on the part of other. Further, such terms of offer and acceptance must be concluded between the parties to come under the definition of a "contract". It is very much evident from the exchange of correspondences by and between the parties that a "concluded contract" was never in reality constituted, spelling out the contours on whom the final onus of removal/cost sharing of the Railway Tracks actually rested upon. In the present case, the agreement entered into by and between the parties had not been the result of any particular piece of offer and resultant acceptance by the parties. The agreement of License for the subject occupation was the outcome of the series of letters/ correspondences exchanged between the parties in furtherance of the Tender floated by SMPK and as such, the letters/ correspondences/ GTC of Tender are required to be read as a whole for understanding the terms and conditions on which the premises had been given on License. In the particular case, a formal agreement of license has also not been signed and executed by and between the parties, though an explicit provision of the same was there in the letter dated 29.04.2013 addressed by SMPK to O.P., and hence, the terms and conditions of the license have to be inferred from the series of letters/ correspondence exchanged by and between the parties. Though it has been the case of SMPK that the O.P. failed and neglected to sign and submit the formal agreement for License, it is clear that both the

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parties are in broad consensus of the contours of the terms/conditions governing the 11 months' license granted by SMPK and accepted by O.P., and which was in force from 01.08.2013 to 30.06.2014.

It is clear in the GTC of Tender that a party who proposes to take a land on License had the liberty to inspect the same before participating in the Tender Process. As per 'Clause 9' of the GTC of the Tender, "the tenderers may inspect the shed/ godown / warehouse/ other misc. structures/ land if they so desire". Further, it appears from records that the O.P. came into occupation of the Port Property on 01.08.2013, i.e. much after the offer of License dated 29.04.2013 made by SMPK in this respect. Thus, O.P. had ample time and opportunity to inspect the premises in question, both during the process of participation of the tender and after formal acceptance of its offer by SMPK dated 29.4.13, which could have had a cardinal bearing in their decision to take the Railway served premises of SMPK under License.

I have taken into consideration the various correspondences exchanged by and between the parties and I do not find any contractual liability on the part of Port Authority for removal of the said Railway Tracks from the premises given to O.P. under Licence. In the absence of a specific liability for such withdrawal by the Landlord/SMPK, it is very difficult to accept the contentions of O.P., with regard to SMPK's failure for withdrawal of such Railway Tracks. I am firm in holding that O.P. cannot take the plea of non-observance of duty by SMPK by defaulting or delaying withdrawal of Railway Tracks, as a shield for suspending payment of rental dues and/or charges for occupation into the public premises. Accordingly, O.P. cannot seek a legal entitlement in seeking reimbursement of the reported expenditure incurred by it for removal of the Railway Tracks.

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It is another case that it is only after the removal of Railway Tracks that the O.P. came into occupation of the port property in question with commencement of the licence period in August, 2013 and hence, allegation of O.P. of non-utilization of land due to Railway Tracks, does not have ground.

In this connection, I am fortified by the Order dated 06.08.2018 passed by the Hon'ble Calcutta High Court dismissing the W.P. No.6269 (W) of 2009 with the following observations:

" ...Tariff is fixed on the basis of the nature of the land and not on the basis of occupants. It cannot be said that the port trust authorities had discriminated against the members of the petitioner by not taking into consideration the occupation of the land rather than the land itself. In fact, it is a wholesome policy to fix the rates on the basis of the nature of the land rather than the occupants.

So far as the withdrawal of facilities as claimed is concerned, it is for the petitioner to decide on continuing with the occupation of the land or not. The so-called withdrawal of railway tracks is of no consequence. The port trust authorities do not provide railway services.

In such circumstances, there is no merit in the present writ petition. WP No.6269(W) of 2009 stands dismissed....."

Hence, the plea of O.P. for commensurate reduction in License fees/ Rent is extraneous and cannot be entertained.

Hence the issues are decided against O.P.

With regard to **issues No. 7, 8, 9 and 10**, it is clear that the possession of the subject premises was granted to O.P. by SMPK on License basis. Now, as per law, License like the one granted to O.P., continues only on the basis of timely

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payment of License Fees / Rent bills and non-payment of the same, even for a fraction of a period, is enough to vitiate the contract.

Now, it is the case of SMPK that O.P. has defaulted in payment of License Fees/ rental dues as charged in terms of the provisions laid down in Major Port Trust Act, 1963 and now, inter-alia, in terms of The Major Port Authorities Act, 2021. On the other hand, it has been contended by O.P. that it had not defaulted in payment of monthly licence fees and taxes. It is the SMPK authorities, who had wrongfully deposited the Cheques to the Bank before their due dates, resulting in their dishonouring. It is the case of O.P. that it had been making payment of monthly licence fees and taxes from September, 2013 and such payments are either preferred through Cheques or through the process of Bank transfers. It is also the case of O.P. that in terms of its communication dated 15.07.2013, it had requested SMPK not to encash the PDC (Post Dated Cheques) on such assurance that they would be paying the rent before due time.

It is further the case of O.P. that no break-up of the Schedule "B" for Rent dues or that of "C" for Compensation/ Damage charges of the eviction petition has been disclosed to O.P., which militated against the principles of natural justice. During the course of hearing, it has also been brought to my notice by O.P. that a number of payments made by O.P. have not been taken into account by SMPK and therefore, O.P. made prayers for adjustments of the same.

After thorough perusal of records, I find that statement of accounts as prepared and maintained by SMPK was handed over to O.P. on repeated occasions, such as under the cover of SMPK's application dated 26.05.2017, 14.12.2018 and during the course of hearing on 21.07.2016. Hence, it is



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understood and well taken that during continuation of the proceedings, the detailed break-up of the 'Schedule B' / Rent and 'Schedule C' / Compensation have been provided to O.P.

In my view, such statements maintained by the statutory authority like SMPK in the usual course of business has definite evidentiary value, unless challenged through any other fortified documents/evidences etc, ready to bear the test of legal scrutiny. Records produced by the SMPK in the form of Statement of Accounts maintained in official course of business reveals that the O.P. has made payment intermittently, as per their own whims and fancies and not in a regular fashion as per the terms of the License. Further, in terms of the Interim Reply dated 24.07.2015, it has been admitted by O.P. that they had been making payments as per their "own calculations".

It is a settled Law that a licensee like O.P. is under legal obligation to pay the license fees/ rents for the occupation, whether demanded by SMPK or not, so long as the possession of the premises is being enjoyed by O.P.

Interest is the natural fallout for delayed payments of Rent and as such, the O.P. is liable to pay interest for the same.

In terms of the application dated 23.05.2016, the O.P. addressed the issue of non-payment of licence fees by submitting that once the joint inspection was over for assessment of the actual demarcation of the area to come under proposed flyover, the statement of accounts was reconciled and the licence agreement executed, the O.P. would take "immediate steps to liquidate the dues of SMPK", after adjustment of the "excess amount" charged as rent bills. In the given circumstances, as explained, such an application dated 23.05.2016 from O.P. is clearly indicative of outstanding dues being payable on the part of O.P., as per

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SMPK's statement of account, at the time of issuance of the letter dated 23.05.2016.

During the course of hearing, on 21.07.2016, it was brought to my notice by SMPK that due to the reduction of the area of land, the occupational charges payable by O.P. stood modified and accordingly, SMPK filed a modified/ updated statement of accounts with a copy forwarded to O.P. on repeated occasions, through SMPK's applications dated 26.05.2017, 14.12.2018 etc.

The O.P. has complained of lack of business environment due to the construction of Flyover and non-removal of Railway Tracks by SMPK etc, but this Forum has nothing to give cognizance on these issues; for, the O.P., after taking time to volitionally accept the premises as per the terms of Licence, on 'as is where is basis', was well within its right and decision, to relocate to another location after handing over the premises to the Port Authority, had the situation turned so grim and commercially unlucrative! The conduct of the O.P. suggests that it has definite business interest woven in its area of occupation, which cannot be allowed to thrive at the cost of the public exchequer.

There is no justification forthcoming from the O.P. as to how it is entitled to enjoy the public premises without paying the due License Fees/ Rent to the statutory authority. In my view, O.P. has lost all right to occupy the premises in view of its failure to liquidate the estate dues in total.

The Port Authority has a definite legitimate claim to get its revenue involved into this matter as per the SMPK's Schedule of Rent Charges for the relevant period and O.P. cannot claim continuance of its occupation without making payment of the

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requisite charges as mentioned in the Schedule of Rent Charges. It requires mention here that SMPK is the successor in interest of the erstwhile Commissioners for the Port of Kolkata which is a 'Local Authority', as defined under the General Clauses Act, 1897 (Section 3) and West Bengal General Clauses Act, 1899 (Section 3(23)). On the application of the Major Port Trusts Act, 1963 (since repealed in terms of the Major Port Authorities Act, 2021), all properties, assets and funds etc. vested in the Central Government or, as the case may be, in any other Authority (Commissioners for the Port of Calcutta constituted under the Bengal Act) for the purpose of Port was immediately vested in the Board (SMPK Board under Section 29 of the MPT Act). The Port Trust Authority, from time to time by issuance of notification in the Official Gazette, fixed the scale of rates on which lands and structures belonging to Port Authority are to be let out. In terms of the power granted U/s 52 of the Major Port Trusts Act, 1963, the Central Government was to approve such rates before it was made applicable. In 1997, Sec. 52 was repealed and an alternate mechanism was evolved by which power to fix rent was assigned to the Tariff Authority of the Major Ports. Sec. 49 of M.P.T Act was also amended by the Port Laws (Amendment) Act 1997 with effect from 09.01.1997.

The validity of these provisions of the MPT Act was upheld by the Hon'ble Supreme Court in the case of Luga Bay Shipping Corporation -Vs- Board of Trustees of the Port of Cochin and Ors. Reported in AIR 1997 SC 544 = 1997(1) SCC 631. In the course of hearing, I find that the charges claimed by SMPK are on the basis of the said Schedule of Rent Charges as applicable for all the tenants/occupiers of the premises in similarly placed situations and such Schedule of Rent Charges is the notified rates of charges under provisions of the Major Port Trusts Act 1963.

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On the case of SMPK with regard to dishonor of cheques by O.P., it is my considered view that this Forum, being constituted and deemed to exercise its functions under the provisions of the Public Premises Act, 1971, is not empowered to deal with and decide the question of dishonor of Cheques by O.P., as has been alleged by SMPK, and there is a separate Forum, exercising altogether a different mechanism, duly sanctioned under relevant statute, to decide on such issues. Further, the issue of 'non-payment' by O.P. being established and discussed as aforesaid, I find no reason to take into consideration the said request of O.P. for non-encashment of cheques tendered by O.P., vis-a-vis the justification of SMPK for their reported attempt at encashment of the same.

Hence, I am convinced that O.P. violated the condition of tenancy under License by way of default in making payment of License Fees/ Rental Bills. Mere claim that the actions of SMPK are arbitrary and whimsical, for non-adjustments of payments made by O.P., is not sufficient to defend the interest of the O.P. and the cause of action initiated by SMPK, regarding non-payment of rental dues, is very much sustainable. In my view, such claim of charges for License Fees /Rent by SMPK is based on sound reasoning and should be acceptable by this Forum of Law. I may conclude that no notice for revocation of license was necessary as the license continuing on month to month basis had come to an end where the licensee (O.P.) defaulted in payment of license fees inspite of demand from the licensor /SMPK.

Thus the issues are decided accordingly.

On the **Issue no 11**, veering around the allegation of O.P. regarding signing of the application/s by an officer of SMPK,

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who is allegedly not competent to file application for legal proceeding on behalf of SMPK, it is noted in the instant case that the Sr. Assistant Traffic Manager (Estate), SMPK of the Syama Prasad Mookerjee Port, Kolkata has filed the original application dated 15.06.2015 on behalf of the Estate Manager, SMPK. In this case, the Estate Manager of Syama Prasad Mookerjee Port, Kolkata (erstwhile Kolkata Port Trust) has issued the notice demanding possession dated 12.05.2015. In my view, the Estate Manager, SMPK is very much competent to serve notice demanding possession, acting on behalf of the Board of Trustees' of the Syama Prasad Mookerjee Port, Kolkata (SMPK), particularly when specific approval of the Chairman, SMPK is obtained before service of such notice as per the established practice of delegation of authority. The Estate Manager, SMPK is merely communicating the decision on behalf of the Chairman, SMPK and such ministerial act on the part of the Estate Manager and Sr. Assistant Traffic Manager (Estate) cannot be said to be out of jurisdiction. I am also of the view that the Estate Manager, SMPK and Sr. Assistant Traffic Manager (Estate) have acted as the agents of Board of Trustees of the Syama Prasad Mookerjee Port, Kolkata (SMPK) and accordingly, the inherent bonafides/locus standi of such an act cannot be questioned by O.P. on the plea of "incompetency" or an "act without or in excess of jurisdiction".

To take this view, I have borrowed my support from the decision of the Division Bench of Calcutta High Court delivered on 28.01.2013 by Their Lordship Hon'ble Justice Girish Chandra Gupta J. and Hon'ble Justice Tarun Kumar Dutta J. in A.P.O. No. 108 of 2010 (Kolkata Port Trust -Vs- M/s Universal Autocrafts Pvt. Ltd. & Anr.) It may be recalled that service of notice, determining a tenancy under lease, by

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With regard to **Issue No 12**, I must say that according to law the question of Estoppel arises when one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed in any suit or proceedings between himself and such person or his representative, to deny the truth of that thing. In other words, to constitute an Estoppel there must be an intention or permission to believe and act upon certain thing. There is no material to prove any intention or permission on the part of SMPK to consider/accept O.P's status into the Public Premises as "Licencee" in respect of the present proceedings, beyond the period as specifically laid down in terms of the licence agreement, by and between the parties. It is also the case of SMPK that SMPK do not recognize O.P. as their tenant under licence or lease.

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It is my considered view that the question of 'Estoppel' as raised on behalf of O.P. does not arise at all in view of the facts and circumstances of the case. It is evident from the records of the proceeding that SMPK never consented to the occupation of O.P. beyond the period of license allotted to them. No permission of any sort was granted to O.P. by SMPK to continue with the occupation after expiry of the period of license as aforesaid. Further, the intention of SMPK is very much obvious from the original application filed way back in 2015 at this Forum, seeking eviction of O.P. from the premises in question. Thus, I find no element of rationale/veracity in the submissions of O.P. that there was Intention or Permission from SMPK to let the O.P. continue with the possession of the premises beyond expiry of the license enjoyed by them.

Hence, the issue is decided against O.P.

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With regard to **issue No 13**, it has been the allegation of SMPK in terms of their original application dated 15.06.2015 that O.P. has inducted a number of unauthorized entities over the subject premises and thereby caused a gross violation of the proviso contained in Clause no. 4 of GTC. It was contended by SMPK that outside entities viz. 'Rush Fitness', 'Bella Home', 'Devnil' were found to be functioning at the premises and in support of such contentions, SMPK has filed a copy of newspaper advertisement published in the English daily, 'The Telegraph' dated 28.09.2014 and 10.03.2015. It also appears from records, that a joint inspection of the premises was held on 31.05.2016 and the Report of such inspection was filed before this Forum on 01.06.2016. It appears from the said report that the representatives of both the parties were present at the premises when the inspection was carried out and placed their respective signatures in the Report, prepared after such joint inspection. It is, inter-alia, reported that "paper stickers" showing the name of O.P. have been found affixed on the outer door of every compartment of shed space and on the boundary wall near the entrance. During the course of such joint inspection, certain compartments (viz. Compartment nos. 3,4,9 and 10) out of a total of 10 (ten), were found in "sealed condition", with a sign board displaying that "the stock is pledged with SBI, MSME Branch, Kolkata". It was noticed that Compartment Nos. 1 & 2 were being mainly used for the purpose of storage of furniture and light fittings, the Compartment No. 5 & 6, mainly for storage of 'exhibition materials', 'racks' and placement of 'display racks', while the Compartment No. 7 was found in vacant condition. Various photographs of the said Compartments bearing signatures of representatives of both the parties were also enclosed with the said joint inspection report.

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SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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1480, 1480/D of 2015 Order Sheet No. 106

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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Sharma. It was reported that the said 'Stumps' made a huge 'artificial playground' for sports like cricket and football, "surrounded by nets within the premises". It was further reported that another portion of the said premises is being issued by various entities viz. 'Rush Fitness Studio'/ 'Gymnasium', 'Mullato, as luxury furniture manufacturers', 'Autocraft' as Two Wheeler Show Room, 'Namrata Joshipura & Dev R Nil' running designer clothing stores. Further, it is stated to have been gathered from a local enquiry that the entire premises is being handled and maintained by one Shri Meghnath Poddar, without any lawful and valid grant from SMPK.

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Thus, taking into consideration all the above Reports of Joint inspection/ inspection of the premises, it is understood that there are entities running different commercial activities within the premises in question, at different points in time. It can be said that the existence of such entities is an admitted position in this case and their continued prevalence is well corroborated in terms the Reports of joint inspections dated 31.05.2016 and 10.07.2018, bearing signatures of both the parties.

Now, the question arises as to the precise authority under which the entities viz. 'Rush Fitness Centre', 'Bella Home', 'Devoil' or 'Namrata Joshipura & Dev R Nil', 'Stumps' etc. have been functioning at the premises. In this regard, I have taken into consideration the submission of O.P. in their reply dated 17.06.2013 that the entire premises in question has all along been under the occupation of O.P., or its "group or associated companies". It is stated that all the entities are functioning under the "same management" of O.P. In support of such contentions, O.P. craved leave to produce the shareholding pattern of such entities/ companies.

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Case No. 148, 1480 / 0 of 2015 Order Sheet No. 105

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Thereafter, another joint inspection of the premises was held on 10.07.2018 and the Report of such inspection was filed before this forum under the cover of SMPK's application dated 20.08.2018. It appears from the Report of joint inspection dated 10.07.2018 that Hanger/Compartment Nos. 1 to 2 were being used for the purpose of the 'storage and showroom of furniture', 'home decorating items with price tags of various companies', 'catalogues of tiles', 'false ceiling' etc., Hanger/Compartment No. 3 was being used for the purpose of the storage and showroom of 'props' of 'films', 'drama etc'. 'paintings', 'dresses', 'dress materials with price tags of various companies', 'artefact', 'show pieces', 'home decorating items' etc., Hanger/Compartment No. 4 was being used for the purpose of storage and showroom of 'artefacts', 'show pieces', 'decorating items with price tags of various companies', Hanger/Compartment Nos. 5 & 6 were being used for storage of 'empty racks', Hanger/Compartment Nos. 7 for the storage of 'scrap materials', Hanger/Compartment No. 8 for the storage of 'sanitary items', 'bathroom fittings, faucets, bathtubs, sinks' etc., Hanger/Compartment No. 9 for the office and allied facilities as part of full-fledged, 'commercial fitness centre' under the name and style of 'Rush Fitness Centre' and Hanger/Compartment No. 10 was also being used as full-fledged 'commercial fitness centre' under the name and style of "Rush Fitness Centre". It was further mentioned that all the Hangers/Compartments are air-conditioned.

Thereafter, it appears from the application of SMPK dated 25.03.2022, addressed to their Ld. Advocate, a copy of which was endorsed to this Forum that one portion of the premises was under construction by one company in the name and style of "Stumps", being operated by one Mr. John Howie, who is reported to be appointed by another Shri Subham

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During the course of the proceedings, though ample opportunities spanning over a period of almost 4 (four) years have been provided to the parties to file documents/ evidence in support of their contentions, not a single piece of paper, establishing the connection of O.P. with the said above-named entities/ companies has been filed by the O.P. till date. As per the established tenets of law, a mere and perfunctory denial by O.P., of the charge of breach brought against it by SMPK, by taking the plea that the possession of the entire premises in question is with O.P. or its group of associate Companies, without evidentiary support, does not stand the test of legal Scrutiny.

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It is the Law of the land that the holder of a meager interest like Licensee is not in a position to further transfer its license hold premises to any other person. License is not a transferable or heritable interest. I find that such proposition of law has been embedded in the GTC of Tender floated by SMPK as in terms of Clause 4 of GTC, "subletting and/or under-letting, transfer or assignment of the aforesaid licensed premises" was not permissible.

No piece of evidence has been produced by the O.P. to contradict or rebut the evidence produced by SMPK viz. the said newspaper advertisement of 'Bella Home' in the English daily 'The Telegraph'. The property has been jointly inspected on different occasions and reports of such inspections have been prepared and signed by the representatives of both the parties. It is evident that the representative of O.P. have put their respective signatures on the said report of joint inspections dated 31.05.2016 and 10.07.2018 as well as on the photographs enclosed with the said joint reports. No qualifying remark or contrary piece of evidence has been

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adduced by O.P. in those reports, or even thereafter, till passing of this order, contesting the submissions of SMPK. Further, it also appears that certain other additional information was revealed during the inspection on 10.07.2018, when certain compartments/hangers were found to be commercially functional which were earlier found to be closed during the inspection carried out on 31.05.2016. Thus, it is quite clear that there is a consistency in the submission of SMPK as has been brought out in terms of the original application dated 15.06.2015 and reiterated through their subsequent applications, reports/submissions and other testimonies etc. of the continued existence of unauthorized commercial entities functioning over the subject premises at different points of time.

It is my firm view that an unauthorised occupant like O.P. has no authority under law to induct another occupant into the premises, that too for the purpose of making unlawful gains. In my view, as the ground of unauthorised parting with possession is sufficiently proved against O.P., it cannot escape the consequences of such unauthorised acts on its part. I cannot but appreciate that the state of affairs/willful transgressions prevailing in the public premises in question, the authority of which is supposedly derived by O.P., from a quondam agreement/jural relationship once extant between the parties, as most appalling and not conscionable as per the underlying tenets of law. I find that the public premises is being used squarely for the purpose of making unlawful commercial gains by way of letting it out to unauthorised entities, who are enjoying the prime property, unauthorisedly, thereby depriving the statutory authority, the rightful owner of the said premises viz. SMPK, in the instant case, of its legitimate dues.

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Hence, I am firm in holding that O.P. has carried out parting with possession without having any authority under law.

Hence, the issue is decided against O.P.

On the **issue Nos. 14 and 15**, regarding carrying out of "unauthorised" constructions and demolition of structures by O.P., it is the case of SMPK in terms of the original application dated 15.06.2015 that O.P. has demolished certain SMPK's structures unauthorisedly in gross violation of Clause-7 of GTC of Tender. It is also the case of SMPK in terms of the said application dated 15.06.2015 that the O.P. has erected unauthorized structures in the said premises flouting clause-16 of GTC of Tender. It appears that O.P. in their Interim Reply dated 24.7.2015 has denied the allegations of SMPK of erection and/or demolition of structures and it has contended that the structures of the premises were handed over on 'as is where is' basis and that there were no 'gates', 'roofing sheets' or 'guard goomtis' as has been alleged by the SMPK. It was further argued by O.P. that they had to restore the structures as the same were in 'unusable condition' and that it took nearly a year to repair and restore the same. Further, it has been stated by O.P. that the allegation of SMPK regarding a structure measuring 8.5 sq.mt. being erected by O.P. near the gate of the premises is not borne by facts as the O.P., being in the possession of the premises, has applied to CESC for installation of a new electric meter and removal of the old one. It is stated by O.P. that for installation of the new meter, CESC was in requirement of fixing a 'panel board' near the then existing meter. The 'old meter' was in a dilapidated condition, and as such, the O.P. had carried out certain repairs/ renovation of the said room for fixing the panel board for installation of the new meter and that a temporary shed has been put by O.P. for the protection of the electric meter. An argument has been

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raised by O.P. that under no circumstances such repair or renovation or fixing up a panel board can be construed as a 'new structure' erected by O.P. It has been further maintained by O.P. that all the works as aforesaid, have been done, upon the instruction from CESC. In support of such contention, O.P. has produced copies of letters exchanged between them and CESC dated 12.07.2013, 22.08.2013, 01.03.2014 etc.

A sketch plan showing the status of unauthorized construction has been depicted in the plan produced by SMPK under the cover of the report of Joint Inspection dated 31.05.2016, duly signed by the representatives of both the parties. It appears from the said sketch plan that 4 (four) additional structures have been found to be erected at the premises licensed to O.P. Further, a goomty measuring 2.9 sq. mts. shown in red border has been stated to be demolished. Subsequently, a further report of joint inspection dated 10.7.2018 has been filed before this forum along with certain sketch plans dated 1.8.2013, 11.7.2014, 31.5.2016 and 17.7.2018 (signed by representatives of both the parties) from where it appears that certain structures (as shown in blue and/or red border etc.) have been categorised as 'unauthorized' erection/ demolition of structures.

Upon a careful perusal of all the aforesaid sketch plans/documents, it can certainly be concluded that certain structures have been added, erected/ demolished at the premises after the O.P. came into occupation of the same and there is an element of consistency in the claim of SMPK that certain structures have been erected/ demolished at the premises at the instance of O.P. in complete deviation of the terms and conditions of license, as evident from the original application of SMPK dated 15.06.2015 and thereafter, corroborated through a series of Inspection Reports, duly

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signed by the concerned parties. This forum is not in a position to take into consideration the submission of O.P. that the contractors of L & T had demolished the structures of SMPK without perusing any piece of evidence furnished by O.P., in clear support of such statement.

During the course of instant proceedings, no contrary, substantial and bankable piece of evidence to SMPK's allegation of unauthorised erection/ demolition of structures has been furnished from O.P's end, barring the statements of O.P. regarding installation of a new electric meter and related accessories, executed as per the advice of CESC. The O.P. did not produce relevant approval from any of SMPK's office, deemed, as per agreement, for erection/ demolition of structures in the SMPK's premises, such as, additional structures measuring 97.5 sq.m. and demolition of RCC Goomties of 4 (four) no. measuring 14.03 sq.mt., wall with wooden roof under godown etc. I find from extant records that the SMPK had been addressing the O.P. with the request to remove the unauthorised construction but no such confirmation/assurance as to the affirmative/corrective action taken by O.P. has been submitted before this Forum. In my view, it is clearly indicative of O.P. having carried out such activities during the continuance of the license period, both within the period and after its expiry, at different points of time or the other, without adhering to the said conditions of GTC.

As such, I am not inclined to accept the submission of O.P. that it is not guilty of the breaches of unauthorised construction or demolition of structures and I am firm in holding that the O.P. has carried out unauthorised construction and demolitions without having any authority under law.

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Hence, the issues are decided against O.P.

Regarding **Issue No 16**, the forgoing discussions certainly lead to the conclusion that O.P. has put the premises in use in complete deviation from the permitted use of the same as had been granted to them in terms of the License agreement with SMPK.

Even, with a 'willful suspension of disbelief', if it is accepted that the management of the different entities viz. 'Rush Fitness Centre', 'Bella Home', 'Devnii' or 'Namrata Joshipura & Dev R Nil', 'Stumps' etc. were indeed being run by O.P. or its group or associate companies, it could not be logically inferred under any stretch of fertile imagination, or acceptable prudence, as to how a business activity of running a 'Gymnasium'/'commercial fitness centre', 'two wheeler show room', 'artificial playground', 'designer clothing stores' etc. should come under the purview of the permitted use of the premises of "storage and warehousing", as Licensed to O.P.

I have also taken into consideration the arguments made by O.P that it has been using the premises for the purpose of "Warehouse" and there is no provision in law that constrains 'decoration' of a "Warehouse" aimed at better facilities for ease and comfort.

Even if, the additions and alterations made by O.P. in the premises in question, viz., installation of air conditioners or other decking up/ beautification measures are taken as 'civic facility', it is not understood, as already outlined in the foregoing, if turning such outlets into 'Gymnasium'/'commercial fitness centre', 'two wheeler show room', 'artificial playground', 'designer clothing stores' etc. are

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CENTRAL GOVT.

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also to be construed as mere beautification/ add-ons/ improved 'civic facilities'/' arrangement' aimed at ease and comfort of the premises, to be ostensibly used as 'warehousing and storing', as permitted under the terms of licence/GTC, existing between SMPK and OP. It appears from Clause 7 of GTC of tender that in case the O.P. wanted to avail of better 'civic facilities'/'arrangement', it was within their duty to approach SMPK to seek concurrence for the same and after due satisfaction of all the concerned authorities as well SMPK, O.P., could have undertaken the said exercise.

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Thus, the issue is decided against the O.P.

With regard to **issue No 17**, it is the case of O.P. that the action of the SMPK clearly violates the guideline issued by the Govt. of India dated 30.05.2002, as published in the Gazette of India dated 8th June 2002.

In this regard, I am of the view that the guideline issued by the Govt. of India cannot override the specific provision of law. The judgment of the Hon'ble Supreme Court of India reported in (2008) 3 Supreme Court Cases 279 (New India Assurance Co. Ltd. -vs- Nusli Neville Wadia & Anr.) is instrumental in deciding the question of acceptability of such "guideline". The Hon'ble Supreme Court of India observed that issuance of such guideline is not controlled by statutory provision and the effect thereof is advisory in character, with no legal right being conferred upon a tenant. Thus, when the adjudication process before this Forum of Law has been started, with the service of requisite notice for Show Cause, an ample opportunity is being given to O.P., in accordance with the inalienable principle of his natural right of self-defence, to establish its authority to occupy the public



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premises, thus demolishing the grounds for the proposed eviction etc. as mentioned in the Show Cause Notice u/s.4 of the Act. In the process of adjudication, I have to consider as to how O.P. could be termed as a "genuine tenant", when the period of License granted to O.P. had been expired, the License has not been further renewed by SMPK and a notice demanding possession has been issued to the erstwhile license holder / O.P. and SMPK did not at any point of time, after expiration of such License, recognize the O.P. as their lawful tenant. As such, there is hardly any justification and ground for acceptability of the "Govt. Guideline", in all practical sense and purposes, as per the tenets of Law in the instant case.

Hence, the issue is decided accordingly.

The **issues** under **18 and 19** are required to be dealt with, *pari passu*, as they are inter-related through assignation of reasons. The discussions made against the foregoing issues are bound to dominate the foregoing disquisition. I have gone deeply into the submissions/ arguments made on behalf of the parties in the course of hearing. The properties of the SMPK are coming under the purview of "public premises" as defined under the Act. Now the question arises as to how a person becomes an unauthorized occupant into such public premises. As per Section 2 (g) of the Act, the "unauthorized occupation", in relation to any public premises, means the occupation by any person of the public premises, without authority for such occupation and includes the continuance in occupation by any person of the public premises after the authority (whether by way of grant or any other mode of transfer) under which he was allowed to occupy the premises, has expired or has been determined for any reason whatsoever.

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May it be mentioned here that the allusion of alleged differential treatment meted out by SMPK, with O.P. vis-à-vis other tenant like Efcalon Tie Up Pvt. Ltd, as made out by O.P., has no contextual relevance in the present facts and circumstances of the case as the subject adjudication is related to the occupation of O.P. and not the said Efcalon Tie Up Pvt. Ltd; and as per the basic tenets of law, any passing allusions made by O.P., about omission/commission of SMPK vis-a-vis a third party, which are not contained within the contours of and not germane to the subject adjudication are to be considered as extraneous and not worthy of this Forum's observation.

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As discussed above, as per the Indian Easements Act, 1882, a license is deemed to be revoked upon the expiration of the period for which it was granted. The Port Authority, by service of a notice dated 12.05.2015, had demanded possession from O.P. As such, I have no bar to accept SMPK's contentions regarding expiration of the License as discussed/decided against the aforesaid paragraphs, on objective evaluation of the facts and circumstances of the case.

Now, the "Damages" are like "mesne profit", that is to say, the profit arising out of wrongful use and occupation of the property in question. I have no hesitation in mind to say that after expiry of the license period, as mentioned in license agreement, O.P. has lost its authority to occupy the public premises; and evaluation of factual aspects involved in this matter, as already discussed in the aforesaid, is a clear pointer to O.P's liability to pay damages/mesne profits as compensation to SMPK, for its continued unauthorized use and occupation of the said piece of land.

As per Clause (ix) of the License agreement and Clause 13 of GTC of Tender, after expiry or termination or revocation of the

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license, if the licensee continues to occupy the area unauthorisedly, the Licensee is liable to pay compensation @ 3 times of the license fee as applicable in the last month of the valid license period from the date of expiry or termination/ revocation of license upto the date of handing over clear, vacant, peaceful and unencumbered possession of the premises to the Trustees/ landlord/ SMPK.

The Port Authority has formed a definite and legitimate claim to get its revenue involved into this matter as per the SMPK's Schedule of Rent Charges for the relevant period and O.P. cannot claim continuance of its occupation, without making payment of the requisite charges as mentioned in the Schedule of Rent Charges.

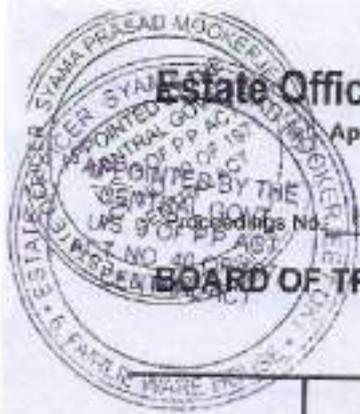
To take this view, I am fortified by the Apex Court judgment report in JT 2006 (4) Sc 277 [Sarup Singh Gupta -vs- Jagdish Singh & Ors.] wherein it has been clearly observed that in the event of termination of lease, the practice followed by Courts is to permit the landlord to receive each month by way of compensation for use and occupation of the premises, an amount equal to the monthly rent, payable by the tenant, as an indemnity or reparation for the loss, suffered on account of the breach committed by the licensee after termination/revocation of the due period of license. As per law, when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, an amount of compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to likely to result from the breach of it. Moreover, as per the law, O.P. is bound to deliver up vacant and peaceful possession of the public premises to SMPK after expiry of the period of license in question. I have no hesitation to observe that O.P's act in

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11-02-2015

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continuing occupation is unauthorized and the O.P. is liable to pay damages for unauthorized use and occupation of the Port property in question upto the date of delivering vacant, unencumbered and peaceful possession to SMPK. With this observation, I must reiterate that the notice dated 12.05.2015, demanding possession from O.P. is valid, lawful and binding upon the parties.

In view of the discussions above, the issues are decided accordingly.

Now, therefore, the logical conclusion which could be arrived at in view of the foregoing discussions, is that it is a fit case for allowing SMPK's prayer for eviction, as prayed for by their application dated 15.06.2015 for the following grounds/ reasons:

1. That O.P. has no authority to occupy the Public Premises in question upon expiry of the License period on 30.06.2014 and after the requisition made by SMPK, vide their letter dated 12.05.2015.
2. That O.P. was under legal obligation to hand over vacant, peaceful and unencumbered possession to SMPK after expiry of the License period in question on 30.06.2014.
3. That O.P. has palpably failed to discharge its liability to hand over possession of the public premises, as a Licensee, in terms of the Indian Easements Act, 1882.
4. That the alleged duty/responsibility of SMPK for withdrawal of Railway Tracks as stated by O.P. does not constitute a part of contractual relationship between the parties.
5. That O.P. has failed to establish its case for reduction in License Fees/ Rent for a plot, which had ceased to be Railway served.

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
CERTIFIED COPY OF THE ORDER
FRASED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Appointed by the Central Govt. Under Section 3 of the Public Premises
(Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1480, 1480/D of 2015 Order Sheet No. 118

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/s Macneill Forklift Services Ltd.

71
07-06-2022

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER
PASSED BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

6. That the O.P. is not at all entitled to claim reimbursement from SMPK for the expenses reportedly incurred by O.P. for said removal of Railway Tracks.
7. That the O.P. has defaulted in making payment of rental dues/ License fees to SMPK.
8. That SMPK's claim on account of License Fees/ Rent is based on the Schedule of Rent Charges (SoR), as published in the Calcutta Gazette, having statutory force in law in determining the quantum of dues/charges as payable by O.P. to SMPK.
9. That this Forum constituted under the provisions of the Public Premises Act, 1971 is not empowered to adjudicate the case of alleged dishonor of Cheques tendered by O.P. to SMPK, when there is a separate mechanism sanctioned by a different statute in force to deal with and decide such issues.
10. That the O.P. is definitely liable to pay Interest in case of delayed payment of License Fees/ Rent to SMPK
11. That the O.P. has failed to take the shield of "competency" of filing application on behalf of SMPK by Sr. Assistant Traffic Manager (Estate), SMPK to question the maintainability of the proceedings.
12. That the proceedings at the instance of SMPK against O.P. is not barred by law of estoppel, waiver.
13. That the O.P. has unauthorisedly parted with the possession of the premises.
14. That the O.P. has made unauthorised constructions at the subject premises.
15. That the O.P. has made or in case, allowed unauthorised demolitions of SMPK structure at the subject premises.
16. That the O.P. has put the premises to use in complete deviation from the 'permitted use' as had been granted to them in terms of the agreement with SMPK.

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Appointed by the Central Govt. Under Section 3 of the Public Premises
(Eviction of Unauthorised Occupants) Act 1971



Proceedings No. 1480, 1480/D of 2015 Order Sheet No. 121/119

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/s Macneill Forklift Services Ltd.

07-06-2022

17. That the O.P's contention regarding non-maintainability of the present proceedings in view of Government Guideline vide Notification dated 30.05.2002, as published in the Gazette of India dated 08.05.2002 has little merit in the eyes of Law, taking into consideration the facts and circumstances of the case.
18. That O.P. has failed to bear any witness or adduce any evidence in support of its contention regarding "authorized occupation".
19. That notice demanding possession dated 12.05.2015 as issued to O.P. by the Port Authority is valid, lawful and binding upon the parties.
20. That occupation of O.P. has become unauthorized in view of Sec 2 (g) of the Public Premises Act and O.P. is liable to pay damages for unauthorized use and enjoyment of the Port property to SMPK upto the date of handing over of clear, vacant and unencumbered possession to the Port Authority.

By Order of
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT
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SYAMA PRASAD MOOKERJEE PORT
OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

ACCORDINGLY, Department is directed to draw up formal order of eviction u/s.5 of the Act as per Rule made there-under, giving 15 days time to O.P. and/or any person/s, whoever may be in occupation, to vacate the premises. I make it clear that all person/s whoever may be in occupation is liable to be evicted by this order and the SMPK /Port Authority is entitled to claim damages for unauthorized use and enjoyment of the property against O.P., in accordance with the Law, upto the date of free, fair, peaceful and unencumbered recovery of possession of the same.

SMPK is directed to submit a comprehensive status report of the Public Premises in question on inspection of the property after expiry of the 15 days as aforesaid so that necessary

Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Appointed by the Central Govt. Under Section 3 of the Public Premises
(Eviction of Unauthorised Occupants) Act 1971

APPOINTED BY THE
CENTRAL GOVT.
U/S 3 OF PP ACT
ACT NO. 40 OF 1971
CENTRAL ACT

Proceedings No.

1480, 1480/D of 2015 Order Sheet No. 120

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

VS

M/s Macneill Forklift Services Ltd.

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action could be taken for execution of the order of eviction u/s. 5 of the Act as per Rule made under the Act.

In view of the discussions made above, it is my considered view that a sum of Rs 2,13,70,066/- (Rupees Two Crore Thirteen Lakhs Seventy Thousand Sixty Six Only) for the period from 01.06.2015 to 31.01.2016 and Rs 3,31,27,986/- (Rupees Three Crore Thirty One Lakhs Twenty Seven Thousand Nine Hundred Eight Six only) for the period from 01.02.2016 to 30.04.2017 is due and recoverable from O.P. by the Port authority on account of compensation/ mesne profit/ damage charges.

The O.P. must have to pay such dues to SMPK on or before 22nd June, 2022.

Such dues attracts-Compound Interest @ 6.30 % per annum, which is the current rate of interest as per the Interest Act, 1978 (as gathered from the official website of the State Bank of India) from the date of incurrence of liability, till the liquidation of the same, as per the adjustment of payments, if any made so far by O.P., in terms of SMPK's books of accounts.

The formal order u/s 7 of the Act is signed accordingly.

I make it clear that SMPK is entitled to claim damages against O.P. for unauthorized use and occupation of the public premises right upto the date of recovery of clear, vacant and unencumbered possession of the same in accordance with Law, and as such the liability of O.P. to pay damages extends beyond 30.04.2017 as well, till such time the possession of the premise continues to be under the unauthorized occupation with the O.P. SMPK is directed to submit a statement comprising details of its calculation of damages after 30.04.2017, indicating therein, the details of the rate of such charges, and the period of the damages (i.e.

By Order of:
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SYAMA PRASAD MOOKERJEE PORT
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SYAMA PRASAD MOOKERJEE PORT



Estate Officer, SYAMA PRASAD MOOKERJEE PORT, KOLKATA

Appointed by the Central Govt. Under Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971

Proceedings No. 1480, 1480/D Of 2015 Order Sheet No. 121

BOARD OF TRUSTEES OF SYAMA PRASAD MOOKERJEE PORT, KOLKATA

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till the date of taking over of possession) together with the basis on which such charges are claimed against O.P., for my consideration for the purpose of assessment of such damages as per Rule made under the Act.

I make it clear that in the event of failure on the part of O.P. to pay the dues/charges as aforesaid; SMPK is at liberty to recover the dues etc. in accordance with law.

All concerned are directed to act accordingly.

GIVEN UNDER MY HAND AND SEAL

(Kaushik Chatterjee)
ESTATE OFFICER

By Order of:
THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

CERTIFIED COPY OF THE ORDER
PASSES BY THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

OFFICE OF THE ESTATE OFFICER
SYAMA PRASAD MOOKERJEE PORT

*****ALL EXHIBITS AND DOCUMENTS
ARE REQUIRED TO BE TAKEN BACK
WITHIN ONE MONTH FROM THE DATE
OF PASSING OF THIS ORDER*****